

The Honorable Robert Lasnik

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

NANCY L. JAMES, Chapter 7 Trustee,
Plaintiff,

v.

JAMES C. PATON, et al.,
Defendants,

Bankruptcy No. 13-16150MLB

Adv. No. 15-01164MLB

Civil Case No. 2:15-cv-1914RSL

FEE PETITION

**NOTE ON MOTION CALENDAR:
JULY 15, 2016**

I. INTRODUCTION & REQUESTED RELIEF

After this Court dismissed all claims against Ms. Tomanka, this Court entered an order confirming that Ms. Tomanka is entitled to indemnification as a matter of law.¹ Ms. Tomanka now submits the following fee petition and respectfully requests an order establishing that Ms. Tomanka is entitled to indemnification for at least \$139,542 in legal fees and \$643.88 in costs.²

¹ See Dkt. Nos. 69 & 117 (3/23/16 & 6/7/16 summary judgment orders).

² This amount does **not** include any fees incurred in connection with Ms. Tomanka's motion for partial summary judgment to establish her legal right to indemnification, reviewing the Trustee's response, or drafting Ms. Tomanka's reply.

A. The Lodestar Method

Under Washington law, the “lodestar” method is applied to determine the amount of attorney fee awards:

In Washington, the “lodestar” method is the starting point for fee calculations. The lodestar fee is determined by multiplying the hours reasonably expended in the litigation by each lawyer’s reasonable hourly rate of compensation. *Bowers v. Transamerica Title Ins. Co.*, 100 Wn.2d 581, 597 (1983). The burden of demonstrating that a fee is reasonable is on the fee applicant, who must provide documentation sufficient “to inform the court, in addition to the number of hours worked, of the type of work performed and the category of attorney who performed the work.” *Scott Fetzer Co. v. Weeks*, 122 Wn.2d 141, 151 (1997) (“*Fetzer II*”) (internal citation and quotations omitted).

Richmond v. Pryor, 2007 WL 777475, at *1 (W.D. Wash. Mar. 9, 2008).

B. Tomanka’s Counsel At Foster Pepper PLLC

The Trustee commenced this adversary proceeding in the bankruptcy court.³ Accordingly, Ms. Tomanka has been represented by bankruptcy counsel and litigation counsel at Foster Pepper.

1. Jane Pearson

Jane Person is a senior member of the Creditor’s Rights & Bankruptcy Group at Foster Pepper and is a leading bankruptcy lawyer in Washington. Ms. Pearson received her B.A. from Seattle University in 1979 and her J.D. from Seattle University in 1982. Ms. Pearson also served as Treasurer, Vice President, and President of the Federal Bar Association of the Western District of Washington in 2009, 2011, and 2011, respectively. Ms. Pearson’s standardly hourly rate in 2015 was \$515 per hour; and her standard hourly rate in 2016 is \$540 per hour. Ms. Pearson was a primary point of contact with the Trustee’s counsel and her profile is attached as Exhibit 1 to the Donovan Declaration.⁴

³ *Bankruptcy No. 13-16150MLB.*

⁴ *Declaration of Jason R. Donovan In Support of Fee Petition (“Donovan Declaration”) at Ex. 1.*

1 **2. Jason Donovan**

2 Jason Donovan is a member in the Litigation & Dispute Resolution Group at Foster
3 Pepper and has fifteen years of commercial litigation experience. Mr. Donovan received his
4 B.M. from Northwestern University in 1999 and his J.D. from the University of Wisconsin Law
5 School in 2001. Prior to joining Foster Pepper in 2008, Mr. Donovan practiced at Jenner &
6 Block in Chicago. Mr. Donovan's standard hourly rate in 2015 was \$420 per hour; and his
7 standard hourly rate in 2016 is \$435 per hour. Mr. Donovan was a primary point of contact with
8 the Trustee's counsel and his profile is attached as Exhibit 2 to the Donovan Declaration.⁵

9 **3. Andrew Morton**

10 Andrew Morton is an attorney in the Creditors' Rights & Bankruptcy Group at Foster
11 Pepper. Mr. Morton received his B.A. from the University of Washington in 2003 and his J.D.
12 from Washington and Lee University School of Law in 2009. Prior to joining Foster Pepper in
13 2014, Mr. Morton practiced in New York City at Milbank, Tweed, Hadley & McCloy.
14 Mr. Morton's standard hourly rate in 2015 was \$315 per hour; and his standard hourly rate in
15 2016 is \$330 per hour. Mr. Morton's profile is attached as Exhibit 3 to the Donovan
16 Declaration.⁶

17 **4. Christopher Rogers**

18 Christopher Rogers is a first-year associate in the Litigation & Dispute Resolution Group
19 at Foster Pepper. Mr. Rogers received his B.A. from Middlebury College in 2010 and his J.D.
20 from American University Washington College of Law in 2015. Mr. Roger's standard hourly
21 rate in 2016 is \$260 per hour. Mr. Roger's profile is attached as Exhibit 4 to the Donovan
22 Declaration.⁷

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25 ⁵ Donovan Declaration at Ex. 2.

26 ⁶ Donovan Declaration at Ex. 3.

⁷ Donovan Declaration at Ex. 4.

C. Itemization And Description Of Work Performed

The Trustee filed suit against Ms. Tomanka on June 30, 2015, and seeks more than \$22 million in damages.⁸ The amount of indemnification sought by Ms. Tomanka in this fee petition represents significantly less than 1% of the \$22 million sought by the Trustee.⁹

The work performed to successfully defend Ms. Tomanka is recorded in the invoices attached at Exhibit 4. For the Court's convenience, a table listing the hours performed for particular tasks and the rate charged by each attorney is set forth in the Donovan Declaration.¹⁰

D. Total Fees And Costs Incurred To Date

Ms. Tomanka respectfully requests that this Court award her at least \$139,542 in legal fees and \$643.88 in costs. A [Proposed] Order to that effect is attached.

DATED this 30th day of June, 2016.

s/Jane Pearson

s/Jason R. Donovan

Jane Pearson, WSBA #12785

Jason R. Donovan, WSBA #40994

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⁸ See, e.g., Donovan Declaration at Ex. 7 (Trustee's answers to Clark Nuber's First Interrogatories and Requests For Production).

⁹ "In assessing the reasonableness of a fee request, a 'vital' consideration is 'the size of the amount in dispute in relation to the fees requested.'" *Berryman v. Metcalf*, 177 Wn.App. 644, 660, 312 P.3d 745 (Div. 1 2013).

¹⁰ Donovan Declaration at ¶7. *Berryman v. Metcalf*, 177 Wn.App. 644, 664, 312 P.3d 745 (Div. 1 2013) ("A useful way for a trial court to determine a loadstar is to prepare a simple table that lists, for each attorney, the hours reasonably performed for particular tasks and the rate charged, which may vary with the type of work."), citing *Bowers v. Transamerica Title Insurance Company*, 100 Wn.2d 581, 597-98, 675 P.2d 193 (1983).

CERTIFICATE OF SERVICE

I hereby declare on June 30, 2016, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following parties *via* electronic service:

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Counsel for Third-Party Defendants Clark Nuber P.S.

1 I further declare that on the date below I mailed *via* regular U.S. mail a copy of the
2 foregoing to:

3 Gregory S. Sheffield
4 Jane Doe Sheffield
5 P.O. Box 1117
6 Republic, WA 99166-1117
7 *Pro Se Defendant*

8 I certify under penalty of perjury under the laws of the United States of America that the
9 foregoing is true and correct.

10 EXECUTED on June 30, 2016, at Seattle, Washington.

11 *s/Jason R. Donovan*
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